



IN REPLY  
REFER TO:

## DEFENSE INFORMATION SYSTEMS AGENCY

701 S. COURTHOUSE ROAD  
ARLINGTON, VIRGINIA 22204-2199

EX PARTE OR LATE FILED

Regulatory/General Counsel

October 16, 1997

William S. Caton  
Federal Communications Commission  
1919 M Street, NW  
Washington, DC 20554

DOCKET FILE COPY ORIGINAL

RECEIVED

OCT 16 1997

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

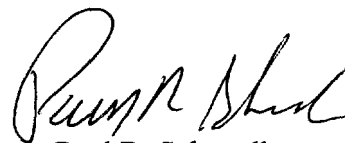
RE: Notification of *Ex Parte* Presentation in IB Docket No. 97-142

Dear Mr. Caton,

This is to inform you of an ex parte presentation in the above referenced proceeding. The staff of the International Bureau hosted a meeting on October 2, 1997 which included representatives of various executive agencies. At the meeting, the staff distributed proposals for consideration by the attendees relating to executive agency concerns regarding the foreign ownership of domestic telecommunications facilities.

The Department of Defense has submitted the attached response to the staff's request.

Please contact the undersigned at (703) 607-6092 should any questions arise in connection with this notification.

  
Paul R. Schwedler

Attachment a/s

Copy: Douglas A. Klein, Esq.  
ITS

No. of Copies rec'd  
LIST ABOVE

021

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

In the Matter of	)	
Rules and Policies on Foreign	)	IB Docket No. 97 - 142
Participation in the US	)	
Telecommunications market	)	

**RECEIVED**  
OCT 16 1997  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**Ex Parte Presentation of  
the Secretary of Defense**

This *ex parte* presentation is in response to a staff request that the Department of Defense (DOD) and other Executive Agencies provide information to assist the Commission when it considers national security and law enforcement matters inherent in foreign ownership of participants in the domestic telecommunications market. The staff of the International Bureau presented several proposals at a meeting held October 2, 1997 at the offices of the Commission.

The proposals covered four areas. They are addressed in order.

**Executive Branch Concerns Regarding Certain Applications**

DOD's concerns regarding foreign ownership involve not only those services provided to DOD by its contractors, but the integrity of the entire Public Switched Network (PSN). DOD could theoretically place any condition it thought advisable on the contractors it uses. It has no such ability or authority to impose conditions on the vast bulk of the PSN. Yet it is the PSN that is covered under Section 706 of the Communications Act of 1934, as amended. In response to an announced merger, DOD and the FBI recently negotiated an agreement with MCI and British Telecommunications. To address DOD's Section 706 concerns, the agreement included provisions that assured that all facilities used by MCI/BT to provide service in the United States would be in the United States, that control of those facilities would remain in the United States

and that there would be no ability for control to be exercised outside the United States. Also included were provisions to provide for periodic assurances that these conditions were in fact being met. The ability to have similar agreements for carriers with large percentages of foreign ownership should not be foreclosed by the Commission.

In further response to this issue, answering the specific questions, DOD believes there can be no automatic determination that certain types of services or specific countries are less susceptible to raising national security concerns than others. As to facilities based vs. resale carriers, it is probably more important that the type of traffic be identified than the type of carrier. As to the country involved, the recent agreement with MCI and British Telecommunications shows that DOD believes that foreign ownership, even by a company chartered in a country many would consider our closest ally, should be addressed.

#### FCC Procedures for Notifying the Executive Branch of Foreign Investments

DOD accepts the proposed change in Commission procedure for Section 214 applications. The Commission proposes to raise the prior notification requirement from 10 percent to more than 25 percent. In the case of multiple carrier investments, the Commission proposes to aggregate all investments in determining whether the 25 percent threshold has been met.

As to Section 310(b)(4) licensees and applications, the Commission proposes to disregard small (5 percent or less) investments in publicly traded shares when calculating whether a U.S. corporation's foreign investment exceeds 25 percent. DOD believes "disregard" goes too far. This should not be an ironclad rule to be applied in all cases. Rather, there should be some flexibility to address situations where it appears the individual small investments in the publicly traded companies are somehow affiliated, perhaps all from the same country or bloc of countries,

or identifiable to a single familial interest.

#### Process and Timeline for Handling Executive Branch Concerns

The process and timeline proposed is acceptable to DOD provided that the Commission consider imposing conditions similar to those it adopted in the MCI/BT proceeding. There, the Commission conditioned its approval of the applications on compliance with the terms of the agreement negotiated by the FBI and DOD. That agreement took several months to complete. From DOD's perspective, the conditions regarding the location of facilities and the ability to control (or not control) the network are conditions that it would want to see before its consent could be given. DOD proposes that those conditions be imposed upon its request<sup>1</sup>. If DOD and the FBI are forced to negotiate in every situation, it is likely that DOD or the FBI would be forced to ask that an application be dismissed without prejudice to allow time for negotiations to be completed.

#### Foreign Ownership of Submarine Cable Landing Stations

DOD agrees that it is not necessary in every instance for the Commission to impose a restriction on the ownership of cable landing stations. Should DOD have a concern in a particular situation, it can address that under the procedures of Executive Order 10530. Alternatively, should the Commission impose the conditions contained in the DOD/FBI and MCI/BT agreement as suggested above, it will have addressed all of DOD's concerns relating to cable landing stations. No ownership restriction needed to be imposed because of the terms of that agreement.

---

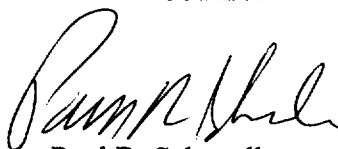
<sup>1</sup>The agreement was case specific and not all of its terms would be applicable in every situation. Other situations might well require additional terms. Selected conditions that are in the agreement, which has Commission approval, could be imposed at the request of DOD.

DOD appreciates that the Commission sought its views on these matters and hopes these comments will assist the Commission in drafting its rules.

Respectfully submitted,



Carl Wayne Smith  
General Counsel



Paul R. Schwedler  
Deputy General Counsel, Regulatory Law  
Defense Information Systems Agency  
701 S. Courthouse Road  
Arlington, VA 22204  
(703) 607-6092